APPENDIX

L.A. No. 30058

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

GEILER

v.

THE COMMISSION ON JUDICIAL QUALIFICATIONS

Petition for rehearing DENIED.

/s/ WRIGHT
Chief Justice

[Supreme Court—Filed Nov. 15, 1973,
G. E. Bishel, Clerk]

[Filed October 25, 1973]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

L.A. 30058

LELAND W. GEILER, a Judge of the Municipal Court,
Petitioner,

v.

THE COMMISSION ON JUDICIAL QUALIFICATIONS,
Respondent.

BY THE COURT

Petitioner was appointed a judge of the Municipal Court for the Los Angeles Judicial District of Los Angeles County on December 30, 1966. On March 26, 1971, the Commission

on Judicial Qualfiications [1] resolved on its own motion pursuant to rule 904 of the California Rules of Court [2] to con-

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[1] The California Constitution, article VI, section 8, provides in pertinent part:

"The Commission on Judicial Qualifications consists of 2 judges of courts of appeal, 2 judges of superior courts, and one judge of a municipal court, each appointed by the Supreme Court; 2 members of the State Bar who have practiced law in the State for 10 years, appointed by its governing body; and 2 citizens who are not judges, retired judges, or members of the State Bar, appointed by the Governor and approved by the Senate, a majority of the membership concurring. All terms are 4 years."

Article VI, section 18, subdivision (c), of the California Constitution provides:

"On recommendation of the Commission on Judicial Qualifications the Supreme Court may (1) retire a judge for disability that seriously interferes with the performance of his duties and is or is likely to become permanent, and (2) censure or remove a judge for action occurring not more than 6 years prior to the commencement of his current term that constitutes wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute."

Subdivision (e) of the same section provides:

"The Judicial Council [see Cal. Const., art. VI, § 6] shall make rules implementing this section and providing for confidentiality of proceedings." These are rules 901-921 of the California Rules of Court.

[2] All references herein to specific rules are to the California Rules of Court.

"Rule 904. Preliminary Investigation.

"(a) The Commission, upon receiving a verified statement, not obviously unfounded or frivolous, alleging facts indicating that a judge is guilty of wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or that he has a disability that seriously interferes with the performance of his duties and is or is likely to become permanent, *shall make a preliminary investigation* to determine whether formal proceedings should be instituted or a hearing held. The Commission without receiving a verified statement *may make* such a preliminary investigation on its own motion."

duct a preliminary investigation of the judicial conduct of petitioner. Pursuant to rule 905 the Commission filed a notice of formal proceedings herein on January 21, 1972. The Commission requested this court by resolution of February 11, 1972, to appoint three special masters for the taking of evidence, as authorized by rule 907. By order filed March 7, 1972, this court appointed three special masters to hear and take evidence in this matter and to report thereon to the Commission.[3]

After a hearing which consumed 21 court days the masters rendered their report on July 5, 1972. The Commission had set forth in the six counts of its notice of formal proceedings 23 specifications of wilful misconduct in office and conduct prejudicial to the administration of justice. The masters found that petitioner had, as charged in five of these specifications, been guilty of conduct prejudicial to the administration of justice which brought the judicial office into disrepute. As to the remaining specifications the masters concluded that petitioner was not guilty of wilful misconduct in office or conduct prejudicial to the administration of justice. The masters unanimously recommended that petitioner "be censured for the following reasons: [¶] 1. Indiscreet use of vulgar, unjudicial and inappropriate language directed toward court attaches and lawyers. [¶] 2. His crude and offensive conduct in public places."

Both petitioner and the examiners filed objections to the report of the masters pursuant to rule 913.[4] After the

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[3] We appointed Arthur L. Alarcon, Judge of the Superior Court of the County of Los Angeles (presiding master); D. Sterry Fagan, Judge of the Superior Court of the County of Los Angeles; and Peter S. Smith, Judge of the Municipal Court for the Alhambra Judicial District of Los Angeles County who, before hearings began was elevated to the Superior Court of the County of Los Angeles.

[4] The Commission designated two deputy attorneys general as examiners "to gather and present evidence before the masters or Commission with respect to the charges against a judge." (Rule 921(f).) The same deputy attorneys general argued the cause for the Commission before this court.

Commission had itself heard oral argument in accordance with rule 914, and following each member's consideration of the evidence adduced before the masters and the objections filed to the masters' findings thereon, the Commission issued its own unanimous findings of fact and conclusions of law. In addition to the five specifications upon which the masters had found petitioner guilty of misconduct, the Commission also found petitioner guilty of conduct prejudicial to the administration of justice as charged in four other specifications. In relation to the remaining fourteen specifications the Commission concluded that the charges were either unproved or did not warrant discipline. The Commission thereupon recommended to this court, pursuant to rule 917 and article VI, section 18 of the California Constitution (see fn. 1, supra), that petitioner be removed from office. The recommendation of removal was approved by seven members of the Commission. The two remaining members of the Commission voted to recommend censure rather than removal of petitioner.

We granted a writ of review to examine the Commission's findings of fact, conclusions of law, and recommendation of removal.[5] (See rule 920.) After reviewing the entire record, we adopt the recommendation of the Commission.

In reviewing the Commission's recommendation, we must address ourselves to the issue of the quantum of proof ap-

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[5] Although a recommendation of censure or removal by the Commission on Judicial Qualifications is not self-effectuating, the Commission does possess fact-finding and recommandatory powers which represent an allocation of judicial functions to the Commission by the Constitution. Thus when we receive a petition challenging the recommendation of the Commission, we deem it proper to treat it as a petition for a writ of review. (Code. Civ. Proc., § 1067.) Code of Civil Procedure section 1068 provides: "A writ of review may be granted . . . when an inferior tribunal, board, or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board, or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy."

plicable to an inquiry concerning a judge. We believe the burden of proof imposed upon the examiners in such an inquiry should be analogous to that employed in State Bar disciplinary proceedings, wherein we require that charges of misconduct "be sustained by convincing proof and to a reasonable certainty and any reasonable doubts should be resolved in favor of the accused." (Moore v. State Bar (1964) 62 Cal.2d 74, 79.) We accordingly declare the standard of proof in such an inquiry before the Commission to be proof by clear and convincing evidence sufficient to sustain a charge to a reasonable certainty. (Cf. Medoff v. State Bar (1969) 71 Cal.2d 535, 550.)

The Commission, not the masters, is vested by the Constitution with the ultimate power to recommend to this court the censure, removal or retirement of a judge. Thus the Commission is free to disregard the report of the masters and may prepare its own findings of fact and consequent conclusions of law. The Commission must, however, apply the "clear and convincing evidence" standard of proof in its independent evaluation of the evidence adduced before the masters. Moreover, "[s]ince it is difficult to pass upon the weight to be given the testimony of a witness when only the written record is before a reviewing body," the Commission may properly "give great weight to the action of the [special masters]," who, having heard the presentation of evidence were "in a better position than the [Commission] to pass upon the truthfulness of the testimony." (McKinney v. State Bar (1964) 62 Cal.2d 194, 196.)

We must also decide the appropriate standard for this court to employ in reviewing a recommendation by the Commission. Were this recommendation of independent force and effect absent further action by this court, our review of the evidentiary basis for that recommendation might properly be limited to a determination whether the Commission's findings of fact were supported by substantial evidence. Under such a standard of review, we would

not be free to disregard the Commission's findings merely because the circumstances involved might also be reasonably reconciled with contrary findings of fact. (Cf. People v. Mosher (1969) 1 Cal.3d 379, 395.) Procedures in State Bar matters offer an alternative standard—an independent review of the record by this court. However, the power to retire a judge for disability or to censure or remove a judge for misconduct is, of course, contingent on the Commission having so recommended (Cal. Const., art. VI, § 18), and is therefore more limited than our power to commence proceedings on our own motion to disbar or suspend an attorney. (See Bus. & Prof. Code, § 6107; In re Hallinan (1954) 43 Cal.2d 243, 253-254.) Nevertheless, since the ultimate, dispositive decision to censure or remove a judge has been entrusted to this court, we conclude that in exercising that authority and in meeting our responsibility we must make our own, independent evaluation of the record evidence adduced below. After conducting such a review we may then decide as a question of law whether certain conduct, which we may have found as a fact to have occurred, was "wilful misconduct in office" or "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." (Cal. Const., art. VI, § 18.) Finally, it is to be our findings of fact and conclusions of law, upon which we are to make our determination of the ultimate action to be taken, to wit, whether we should dismiss the proceedings or order the judge concerned censured or removed from office.

Having clarified what we consider to be the proper institutional role of this court vis-a-vis the Commission and the special masters in an inquiry, we turn to the instant proceeding. It should be noted initially that the masters did apply the proper standard of proof in preparing their findings of fact. The masters' formal findings contain four separate references to a "clear and convincing evidence" standard of proof in holding certain allegations not to have been proven.

Although its conclusions of law differed, the Commission's findings of fact paralleled the masters' findings. The Commission adopted as its own all but a few words of the masters' findings relative to the first five counts of the notice of formal proceedings, containing 22 of the 23 specifications of misconduct by petitioner. Where the Commission's findings in regard to these specifications did differ from the masters', they reflected the Commission's quite proper determination to focus on an *objective* appraisal of petitioner's conduct in terms of the effect of such conduct on the administration of justice. The masters were more concerned with the *subjective* motivations of petitioner in engaging in specified conduct, and with the *subjective* appraisal of his motivations by the persons directly affected by the specified conduct. It should be emphasized that there were no significant differences in the Commission's and the masters' determinations of whether or not the conduct alleged to have occurred in the 23 specifications did in fact occur. In no instance did the Commission find to have occurred conduct alleged in a particular specification, which allegation that masters had previously found not proven.

The specifications found by the Commission to have been proven other than that of count six generally concerned crude behavior and vulgar language which petitioner used in dealing with various professional associates, employees and officers of the court. Petitioner was found to have prodded a deputy public defender with a "dildo" during a conference in chambers one morning, and later that day to have referred to this incident twice in open court so as to curtail the victim's cross-examination of two witnesses. Petitioner was found to have approached a court commissioner from behind in a public corridor of the hall of justice and to have grabbed this victim's testicles. Petitioner was found on two occasions to have made lustful references to his female clerk, once while in chambers in the presence of a group of professional associates. Petitioner was found to have habitually used vulgar and profane language in his

conversations with this clerk, and on two occasions to have used profane terms of personal abuse in reprimanding her and another woman employed by the court. Petitioner was also found to have invited two female attorneys into his chambers wherein he discoursed on the salacious nature of the evidence adduced in criminal cases concerning homosexual acts and rape, punctuating his commentary with profane terms for bodily functions.[6]

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[6] The Commission's findings as to all specifications determined by the Commission to have been proven other than the specification of count six(see fn. 7, *infra*) are as follows:

"FINDINGS

"1. Respondent is and since December 30, 1966, has been a judge of Municipal Court of the Los Angeles Judicial District.

"FINDINGS (*Count One A*)

"2. On the morning of January 29, 1971, Deputy District Attorney G. and Deputy Public Defender David E. were invited into Judge Geiler's chambers by the clerk, Burt Martinez. After Mr. G. and Mr. E. had entered chambers Judge Geiler appeared from the vicinity of the filing cabinet holding a battery-operated object resembling a penis and sometimes referred to as a 'dildo.'

"The object was thrust by Judge Geiler into the area of Mr. E.'s buttocks touching his body. Mr. E. joined the others in Judge Geiler's chambers in general laughter concerning this incident.

"In the morning session on that same date following the above incident and during the course of the preliminary hearing in *People* v. *Hall*, A-172,876 (Exh. 3), Judge Geiler interrupted cross-examination by Mr. E. as follows:

'MR. E: One or two more questions, your Honor, then I won't take any more of your time on this case.

'THE COURT: Get the machine out.

'THE CLERK: The battery?

'THE COURT: The battery.

'MR. E: I have no further questions, your Honor.'

"In the afternoon session during the preliminary hearing in *People* v. *Parks*, A-268-529 (Exh. 4), after an objection by Deputy District Attorney G. to a question by Deputy Public Defender David E., the following occurred:

'THE COURT: It's immaterial whether it was or it wasn't. He's

not charged with anything earlier in the morning at 7:00 o'clock.

'Goes to good faith. Suppose it wasn't.

'It had been but it turned out that he had the thief. Ha, ha, ha. Shove it. That's what you're thinking about. You're convincing me more every moment.

'Did you get those batteries?

'THE CLERK: I'm charging it up. I've got a bigger one. Fifteen volts.

THE COURT: David, we've got a fifteen-volter in there now.

'THE CLERK: With a longer handle.

'THE COURT: Hurry, David. We got a fifteen-volt battery for you.

'MR. E.: Okay. We're referring to that incident this morning, your Honor?

'THE COURT: No, the one that you're going to take home tonight.

'Go ahead.

'MR. E: I have no further questions of this officer, your Honor.'

"The above-quoted remarks of Judge Geiler were intended to and did have the effect of curtailing defense cross-examination during the Hall and Parks matters by means of implied threats of embarrassment and ridicule to Deputy Public Defender E.

". . . "FINDINGS (*Count One B*)

"3. In the fall of 1970, Mr. M., a traffic commissioner, was engaged in a conversation in a hallway on the seventh floor of the Hall of Justice. Judge Geiler approached Commissioner M. from behind, reached under his crotch, and grabbed him by the testicles, causing commissioner M. so much pain that he almost passed out. Nevertheless, Commissioner M. considered the conduct to be friendly horseplay.

". . . "FINDINGS (*Count Three A*)

"4. In the summer of 1969, at a time when five to six men were in Judge Geiler's chambers, Mrs. P., his court clerk, entered the Judge's chambers at his request. Shortly thereafter she left. As she was leaving, Judge Geiler stated, 'How would you like to eat that?' His question referred to Mrs. P. This comment was a crude effort at humor and part of an established course of conduct.

". . . "FINDINGS (*Count Three B*)

"5. On occasions during the early part of 1970, Judge Geiler telephoned his clerk, Mrs. P., and gave her the following instruction with reference to the cases and persons in his courtroom: 'Get the mother fuckers ready. I will be there shortly.' This

type of language was typical of the vocabulary utilized in their conversations.

". . . "FINDINGS (*Count Three C*)

"6. In the early part of 1970, Judge Geiler occasionally asked Mrs. P., 'Did you get any last night?' This comment was a crude effort at humor and part of an established course of conduct.

". . . "FINDINGS (*Count Three D*)

"7. In March of 1970 on an occasion when Mrs. P. returned to court late from her lunch, Judge Geiler told her that she was 'nothing but a fucking clerk' and that she was to do exactly as she was told.

". . . "FINDINGS (*Count Three G*)

"8. On November 10, 1970, Judge Geiler, while in the office of Mrs. E., the calendar court coordinator for the municipal court, used the following language in reprimanding Mrs. E: 'son-of-a-bitch,' 'bitch,' and 'fucking clerk.' Judge Geiler also stated, 'No fucking clerk is going to keep time on me' or 'keep track of me,' and 'Don't you ever forget that you are just a fucking clerk.'

". . . "FINDINGS (*Count Three H*)

"9. Judge Geiler was introduced to a female attorney, Mrs. C. at a Christmas party at the office of Mr. F., also an attorney. On that occasion, outside Mrs. C.'s presence, Mr. F. asked Judge Geiler to help Mrs. C. in criminal matters because of her inexperience.

"On March 17, 1971, Mrs. C. appeared in Judge Geiler's court to conduct a preliminary hearing. Mrs. W., another female attorney, sat at the counsel table with her throughout the preliminary hearing. Upon the completion of that matter Judge Geiler invited Mrs. W. and Mrs. C. into chambers to discuss the handling of preliminary hearings.

"Judge Geiler spoke of the importance of the religion of judges in predicting how they will rule on a matter. However, the major part of the Judge's conversation, a monologue which lasted approximately ten to twenty minutes, was rambling and disjointed. The only thread tying the conversation together was the theme of sex. For example, Judge Geiler told of a gang-rape by 'hot-blooded' Mexicans and of a judge who had vomited upon surreptitiously witnessing a homosexual act in the lavatory at the May Company. Judge Geiler also discussed other homosexual acts and degrees of penetration in rape cases, all with apparent relish at the salacious nature of the subject matter. He used 'street language' such as, 'shit' and 'fuck,' in discussing cases. . . ."

The only substantive difference between the master's and the Commission's findings arose in relation to count six, which set forth the 23d and final specification of misconduct in the original notice. Count six charged: "In nine preliminary hearings, you have arbitrarily and capriciously relieved the public defender and appointed private counsel. . . . In none of these nine cases was there an assertion of a conflict of interest." The findings of the Commission as to count six are set out in the margin.[7]

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[7] "In the nine preliminary hearings specified in COUNT SIX of the Notice of Formal Proceedings the Public Defender was relieved as counsel. The respective defendants were eligible for representation by the Public Defender and the Public Defender's office was willing to represent and was appearing for each defendant. In the eight escape cases, Judge Geiler made a preliminary statement from the bench regarding his sentencing policy on escape cases where there was no evidence of violence or damage to property.

"In each case the defendant advised the court of his desire to plead guilty to a misdemeanor, but the Public Defender refused to plead the defendant guilty for the following reasons:

"(1) *Hakes*—The Public Defender wanted to consolidate this matter with other pending superior court cases so that defendant might spend less time in jail.

"(2) *Cole*—no statement was made to show any reason for the Public Defender's reluctance.

"(3) *Dominguez*—Uncertainty as to the effect of a guilty plea on defendant's parole status.

"(4) *Marquardt*—Refusal of Judge Geiler to make a record of the plea bargain.

"(5) *Oderda*—Uncertainty as to the effect of a guilty plea on defendant's parole status.

"(6) *Saldate*—The records of the proceedings before Judge Geiler do not reflect whether the Public Defender made any statement as to whether or not Saldate would plead guilty or the reasons why he should not do so, nor whether an opportunity was afforded to express the Public Defender's position.

"(7) *Ramirez*—The Public Defender and the District Attorney agreed to a lesser sentence because of mitigating circumstances.

The Commission's findings as to count six are substantially identical to those of the masters save for the final

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Judge Geiler refused but subsequently acceded to the same sentence after the substitution of private counsel.

"(8) *Deever*—Refusal of Judge Geiler to make a record of the plea bargain.

"(9) *Ricketts*—Judge Geiler refused to give the Public Defender additional time to research a possible defense suggested by the defendant.

"There was no evidence to show that there was a conflict of interest between the public defender and the defendants.

"In each case, private counsel was appointed at the request of the defendant for the purpose of the plea only and without compensation. Thereafter, each defendant entered a guilty plea in compliance with 'IN RE TAHL.'

"After the pleas, the defendants in the escape cases received sentences ranging from 10 to 45 days in county jail, consecutive. Defendant Dominguez pleaded guilty to misdemeanor possession of marijuana and was placed on probation and fined $100. No evidence was offered to show that any of the defendants were innocent of the charges.

"Judge Geiler had a hostile attitude and bias toward members of the Public Defender's office. As a result, some members of the Public Defender's office were hostile towards Judge Geiler. Since 1970 the Public Defender's office has attempted to limit the tour of duty of the Deputy Public Defenders assigned to Judge Geiler's court to a period of one week. Four of the five Deputy Public Defenders who testified regarding their being relieved as counsel by Judge Geiler had been admitted to practice law for periods of time ranging from two to four months at that time.

"Deputy Public Defenders were required by office policy to obtain approval from a supervisor before pleading a defendant guilty to a misdemeanor at the time of a preliminary hearing in any municipal court. In eight of the foregoing cases, the Deputy Public Defender had a valid reason for refusing to accede to Judge Geiler's desire for an immediate guilty plea. However, because of Judge Geiler's preconceived bias against Deputy Public Defenders and his professed desire to expedite the administration of justice even at the expense of defendants' constitutional rights, Judge Geiler initiated and carried out the foregoing substitutions of counsel."

two paragraphs. The masters had found mutual hostility between petitioner and the public defender's office; the Commission found petitioner responsible for this hostile relationship. The Commission additionally found that petitioner's substitutions of counsel were the direct result of petitioner's hostile attitude toward deputy public defenders.

We have made a detailed review of the full record and independently find upon clear and convincing evidence in accord with the findings of the Commission, including the findings as to the specification of count six. We adopt the Commission findings as our own.

The Commission concluded on its findings that each of the proven specifications involved conduct constituting "wilful misconduct in office" and "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." With the qualifications subsequently noted, we reach similar conclusions.

The ultimate standard for judicial conduct must be conduct which constantly reaffirms fitness for the high responsibilities of judicial office. It is immaterial that the conduct concerned was probably lawful, albeit unjudicial, or that petitioner may have perceived his offensive and harassing conduct as low-humored horseplay.

The first two canons of the Code of Judicial Conduct proposed in 1972 by the American Bar Association's Special Committee on Standards of Judicial Conduct emphasize the importance of appraising alleged judicial misconduct objectively rather than subjectively. Canon One declares: "a judge should uphold the integrity and independence of the judiciary." The accompanying text adds: "A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved." Canon Two speaks for itself: "A judge should avoid impropriety and *the appearance of impropriety* in *all* his activities." (Italics added.)

The preface to the proposed Code of Judicial Conduct concludes: "The canons and text establish mandatory standards unless otherwise indicated. It is hoped that all jurisdictions will adopt this Code and establish effective disciplinary procedures for its enforcement." California is fortunate in that it need not formally adopt the proposed code in order to hold its judiciary to the high standard of conduct the public and the bar are entitled to expect of the judicial branch of government.

The Commission on Judicial Qualifications was created by constitutional amendment in 1960, when new section 10b was added to article VI. The proposition establishing the Commission found its way to the ballot in response to a demonstrated need to insure that those who sit in judgment in this state are both fit and able to discharge their responsibilities. One of the most dedicated and persuasive proponents of the Commission was Chief Justice Phil S. Gibson of this court.[8]

We had eariler held that the State Bar lacked jurisdiction over judges. (State Bar of California v. Superior Court (1929) 207 Cal. 323.) Due to the unwieldiness of legislative impeachment as a means of imposing judicial discipline, the bar of this state had been held to a higher standard of conduct than the bench—in reverse of the dictates of common sense and sound legal policy. The Commission provided an innovative and effective alternative to the impeachment process.

Although formal proceedings of the Commission have been few, the potentiality of such proceedings has proven to be the vital element of the Commission's efficacy. Each year since the establishment of the Commission the possi-

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[8] See Gibson, *For Modern Courts* (1957) 32 State Bar J. 727, 733-735. See generally Frankel, *Judicial Conduct and Removal of Judges for Cause in California* (1962) 36 So.Cal.L.Rev. 72; Frankel, *Removal of Judges: California Tackles an Old Problem* (1963) 49 A.B.A.J. 166.

bility of an inquiry and ultimately removal from office has led several unfit or disabled judges to remove themselves from the active ranks of the judiciary. In contrast to the low profile of most of its work, the California Commission on Judicial Qualifications, the first such commission created in the United States, has itself been much publicized as a model for other states anxious to share California's reputation for an outstanding judicial system.[9]

This court has considered disciplinary recommendations from the Commission on only five prior occasions. In the first instance, the Commission recommended removal. Without commenting on the validity of the Commission's findings of fact, we rejected the recommendation of removal of the judge concerned. (Stevens v. Commission on Judicial Qualifications (1964) 61 Cal.2d 886.) At that time, however, our Constitution (art. VI, § 10b) authorized removal as the sole disciplinary measure, and limited the grounds for imposing discipline on a judge to "willful misconduct in office or willful and persistent failure to perform his duties or habitual intemperance."[10]

In 1966 a second constitutional amendment concerning the Commission on Judicial Qualifications repealed section 10b and added new section 18 to article VI (see fn. 1, supra), thereby broadening the grounds for removal of a judge and adding the intermediate disciplinary option of

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[9] Chief Justice Roger J. Traynor stated in an address to the Virginia State Bar Association: "When a bench can quit itself of a burdensome member through such a commission, it gains as much as the Bar and the public. It reaps added benefits from each judge's quickened awareness that he must meet reasonable standards of competence and behavior in relation to his office." Traynor, *Who Can Best Judge the Judges?* (1967) 42 State Bar J. 225, 239. See also A.B.A., The Improvement of the Administration of Justice (5th ed., 1971) at pp. 57-58; Frankel, *Judicial Ethics and Discipline for the 1970s* (1970) 54 Judicature 18.

[10] See Frankel, *Judicial Discipline and Removal* (1966) 44 Tex. L. Rev. 1117, 1129-1130.

public censure. Since 1966 this court has on four occasions adopted the recommendation of the Commission that a judge be publicly censured for "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." (In re Chavez (1973) 9 Cal.3d 846; In re Sanchez (1973) 9 Cal.3d 844; In re Glickfeld (1971) 3 Cal.3d 891; In re Chargin (1970) 2 Cal.3d 617.)

As indicated above, the Commission in the instant matter concluded that the conduct proven in the previously discussed specifications constituted "wilful misconduct in office" and "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." As we have noted above, the second ground for imposing discipline was added to the Constitution in 1966. We believe this mandates our construing "wilful misconduct in office" as connoting something graver than the "lesser included offense" of "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." The more serious charge should be reserved for unjudicial conduct which a judge acting in his judicial capacity commits in bad faith, while the lesser charge should be applied to conduct which a judge undertakes in good faith but which nevertheless would appear to an objective observer to be not only unjudicial conduct but conduct prejudicial to public esteem for the judicial office.[11]

Viewed in this light, we conclude that the following specifications of petitioner's vulgar and profane conduct con-

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[11] The lesser charge of "conduct prejudicial to the administration of justice that brings the judicial office into disrepute" would also apply to wilful misconduct out of office, i.e. unjudicial conduct committed in bad faith by a judge not then acting in a judicial capacity. It should be emphasized that our characterization of one ground for imposing discipline as more or less serious than the other does not imply that in a given case we would regard the ultimate sanction of removal as unjustified solely for "conduct prejudicial to the administration of justice which brings the judicial office into disrepute."

stituted "wilful misconduct in office:" petitioner's brandishing of the "dildo" and petitioner's subsequent remarks, found by the Commission to have been made with the intent of curtailing cross-examination by the victim, and petitioner's profane and abusive reprimanding of two court employees. We consider the remaining proven instances of petitioner's vulgar conduct to have been "conduct prejudicial to the administration of justice that brings the judicial office into disrepute."

Turning to the final specification of misconduct embodied in count six, we regard the Commission's conclusions [12] to the worthy of incorporation in this opinion:

"We conclude that Judge Geiler violated Code of Civil Procedure section 284 when he relieved the Deputy Public Defenders in the eight cases (excluding *Cole*). While legal precedent in this area is scant, any excuse for Judge Geiler's noncompliance with Code of Civil Procedure section 284 was precluded by the fact that he did not act in good faith. Judge Geiler interfered with the attorney-client relationship between the public defenders and their clients. All of the cases were the type which probably would have become misdemeanors by sentence had the defendants been held to answer and pleaded guilty or been convicted in the superior court. In these cases, no actual prejudice was suffered by any of the defendants. Nevertheless, Judge Geiler's bad faith interference with the attorney-client relationship in violation of Code of Civil Procedure section 284 constituted conduct prejudicial to the administration of justice and wilful misconduct in office.

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[12] It is significant that all nine members of the Commission concurred in these conclusions. All the findings of fact of the Commission, and all the conclusions of law relative to each proven specification of misconduct were adopted by unanimous resolution. The only non-unanimous act of the Commission was its recommendation of removal, for which seven members of the Commission voted. Two members of the Commission voted to recommend censure.

"During the last few years there has been great public concern over the problem of trial court delay and congestion. It may be argued that Judge Geiler was attempting to respond to this crisis in the court system by encouraging pleas of guilty in minor cases which would undoubtedly result in a misdemeanor disposition in the superior court. However, a judge must decide each case on its own individual merits. In his misguided attempt to expedite justice, Judge Geiler did not do so. By his own testimony, he had biased preconceptions as to public defender cases. This precluded good faith consideration of each of these eight cases on its own merits.

"Judge Geiler's refusal to permit plea bargains in the *Marquardt* and *Deever* cases to be placed 'on the record' was petty, unreasonable and contrary to the rule set forth in *People* v. *West*. Judge Geiler's refusal to allow the Public Defender in the *Ricketts* case additional time to investigate a possible defense was arbitrary and made in callous disregard of the defendant's interests. Judge Geiler's replacement of the Public Defenders in the *Dominguez* and *Oderda* cases in effect precluded the investigation of possible parole consequences of guilty pleas; as such these actions also were made in callous disregard of the defendants' interests. Judge Geiler's summary dismissal of the Public Defender in the *Saldate* case for no apparent reason and without any discussion whatsoever was arbitrary, unjust, and capricious. In the *Ramirez* case, Judge Geiler's removal of the Public Defender who insisted on a lesser sentence, coupled with the Judge's subsequent imposition of the same sentence, was arbitrary and capricious. Finally in the *Hakes* case, Judge Geiler's removal of the Public Defender prevented the reasonable consolidation of this matter with other pending superior court cases.

"Thus we conclude that the actions of Judge Geiler in these eight cases violated Code of Civil Procedure section 284, interfered with the attorney-client relationship and were made in bad faith.

"The foregoing conduct of Respondent constituted wilful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute."

We agree with the Commission that the conduct charged in count six was not only unjudicial but unlawful as well. (Cf. Smith v. Superior Court (1968) 68 Cal.2d 547.) We also are in accord with the Commission in concluding, contrary to the special masters, that petitioner acted in "bad faith." However, we feel this last conclusion requires elucidation.

By "bad faith," we do not mean to imply that petitioner sought to harm the interests of the defendants involved. Rather, we mean that in indulging his petty animosity toward deputy public defenders, and in culmination of a pervasive course of conduct of overreaching his authority over subordinates, petitioner intentionally committed acts which he knew or should have known were beyond his lawful power. The resulting misconduct entailed the most insidious kind of official lawlessness—disregard for the statutory and constitutional rules by which a society of millions and a heritage of centuries have sought to preserve fundamental fairness within a legal system which cannot escape the inherent imperfections of mankind.

No more fragile rights exist under our law than the rights of the indigent accused; consequently these rights are deserving of the greatest judicial solicitude. The ideal of our legal system is that the judicial should be equated with the just. Such an ideal cannot be achieved if one man clothed with judicial power may ignore with impunity such a basic institutional mandate as the sanctity of the attorney-client relationship merely because the attorneys are young deputy defenders and their clients are indigent.

It is immaterial whether petitioner's abuse of power resulted in just or unjust treatment for any given defendant. It is undisputed that petitioner bore no ill will towards the individual defendants enumerated in count six. Peti-

tioner's bad faith was directed towards our legal system itself; his arbitrary substitutions of counsel because of his personal beliefs as to the defendants' guilt and his personal hostility to their counsel smacks of an inquisitorial intent to serve imagined truth at the expense of justice. Our adversary system of justice and our elaborate procedure for the prosecution of alleged criminals represents an institutional recognition of the fallibility of the individual. Much as our political system apportions power among jealous branches of government, so within the judicial branch we have striven to disperse the functions of the judicial process among many adverse participants in the hope that the institutions of our legal system will bear a collective capacity for justice and righteousness which no single mortal can achieve. It is this commitment to institutional justice which petitioner's individual conduct threatens to corrupt. Risk of recurrence of such conduct cannot be tolerated.

After reviewing the entire record and considering all the facts and circumstances, we have concluded that the recommendation of the Commission should be adopted. We therefore order Judge Leland W. Geiler of the Municipal Court of the Los Angeles Judicial District of Los Angeles County removed from office. This order is final forthwith.[13]

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[13] This is the first instance in which we have removed a judge from office and we do so only after careful consideration of all matters, including the standards of conduct to which members of the judiciary must conform, the nature of our review of proceedings before the masters and the Commission, and the full record of those proceedings as reported to this court. The record discloses that the masters rendered their report 120 days after their appointment. During the hearings, which consumed 21 court days, they heard a total of 73 witnesses whose testimony is reported in 3193 pages of transcript. Thereafter the Commission, after careful deliberations over a 56-day period, made and reported its findings of facts, conclusions of law and recommendations. Both the Commission and this court were required to review the full transcript in performance of their responsibilities to make independent findings on a conflicting factual record.

As indicated above, before the advent of the Commission on Judicial Qualifications the bar of this state was held to a higher standard of conduct than the bench. This anomaly has since been rectified and the reverse is now true. We recognize that petitioner's removal from office is required more by the high standards of judicial office than by his personal failings. Much evidence was adduced before the Commission of petitioner's diligence in the work of the law, and his unjudicial conduct cannot be said to amount to moral turpitude, dishonesty or corruption. (Cf. Bus. & Prof. Code, § 6106.) We therefore further order that despite his removal from judicial office Leland W. Geiler shall if otherwise qualified be permitted to practice law in the State of California. (See Cal. Const., art. VI, § 18, subd. (d).)

STATE OF CALIFORNIA
COMMISSION ON JUDICIAL QUALIFICATIONS

HON. ARTHUR L. ALARCON, PRESIDING SPECIAL MASTER
D. STERRY FAGAN, SPECIAL MASTER
HON. PETER S. SMITH, SPECIAL MASTER

IN RE INQUIRY NUMBER 12

Report of the Masters

July 5, 1972

STATEMENT OF PROCEEDINGS

By order of the Commission on Judicial Qualifications dated January 21, 1972, and pursuant to Rule 905, notice that formal proceedings were to be instituted was issued to Judge Leland W. Geiler advising him of the charges against him and the alleged facts upon which such charges were based. An answer was filed, dated and signed by Judge Leland W. Geiler on February 8, 1972, and served on the Examiner on February 9, 1972, in compliance with Rule 906 in which Judge Geiler denied any misconduct

prejudicial to the administration of justice or which brought his judicial office into disrepute.

On March 7, 1972, pursuant to the request of the Commission, the Supreme Court of the State of California, sitting en banc, appointed the undersigned as special masters.

Hearing was set for May 15, 1972, and on that date, after opening statements, the taking of testimony began. Both sides rested on June 19, 1972. Oral argument was completed, and the matter was submitted June 20, 1972. (See Appendix A for the minutes of the hearing.)

FINDINGS OF FACT AND CONCLUSIONS

Count One

You are charged with two assaults, to wit:

A. On the morning of January 29, 1971, you requested Deputy District Attorney Jay David Gould and Deputy Public Defender David A. Elden to step into your chambers. After Mr. Elden had entered your chambers, you emerged from behind a file cabinet with a battery-operated massager resembling a penis and sometimes referred to as a "dildo." You rammed said object into the rectum of Mr. Elden. Later on that day, in the preliminary hearings of *People* v. *Louis James Hall,* No. A-172,876, and *People* v. *Lawrence B. Parks,* No. A-268,529, you threatened Mr. Elden with other assaults with this same battery-operated massager.

Findings

On the morning of January 29, 1971, Deputy District Attorney Jay D. Gould and Deputy Public Defender David Elden were invited into Judge Geiler's chambers by the Clerk, Burt Martinez. After Mr. Gould and Mr. Elden had entered chambers, Judge Geiler appeared from the vicinity of the filing cabinet holding a battery-operated object resembling a penis and sometimes referred as a "Dildo."

The object was thrust by Judge Geiler into the area of Mr. Elden's buttocks touching his body. Mr. Elden joined the others in Judge Geiler's chambers in general laughter concerning this incident.

In the morning session on that same date following the above incident and during the course of the preliminary hearing in *People* v. *Hall,* A-172,876 (Exh. 3) Judge Geiler interrupted cross-examination by Mr. Elden as follows:

"Mr. Eldon: One or two questions, your Honor, then I won't take any more of your time on this case.

"The Court: Get the machine out.

"The Clerk: The battery?

"The Court: The battery.

"Mr. Eldon: I have no further questions, your Honor."

In the afternoon session during the preliminary hearing in *People* v. *Parks,* A-268,529 (Exh. 4) after an objection by Deputy District Attorney Jay Gould, the follow proceedings occurred:

"The Court: It's immaterial whether it was or it wasn't. He's not charged with anything earlier in the morning at 7:00 o'clock.

"Goes to good faith. Suppose it wasn't. It had been but it turned out that he had the thief. Ha, ha, ha. Shove it. That's what you're thinking about. You're convincing me more every moment.

"Did you get those batteries?

"The Clerk: I'm charging it up. I've got a bigger one. Fifteen volts.

"The Court: David, we've got a fifteen-volter in there now.

"The Clerk: With a longer handle.

"The Court: Hurry, David. We got a fifteen-volt battery for you.

"Mr. Elden: Okay. We're referring to that incident this morning, your Honor?

"The Court: No, the one that you're going to take home tonight.

"Go ahead.

"Mr. Elden: I have no further questions of this officer, your Honor."

The above-quoted remarks of Judge Geiler appeared to be an attempt at humor.

CONCLUSIONS:

Judge Geiler's conduct was an attempt at what he believed to be humorous horseplay. He did not intend an offensive touching nor a civil or criminal assault. His remarks during the *Hall* and *Parks* matters were not a threatened assault.

B. In the fall of 1970, Arland A. Myhrvold, a Court Commissioner, was engaged in a conversation in a crowded hallway in the Hall of Justice. You approached Commissioner Myhrvold from the rear and grabbed him by his testicles, creating a scene.

FINDINGS

In the fall of 1970, Arland A. Myhrvold, a Court Commissioner, was engaged in a conversation in a hallway on the seventh floor of the Hall of Justice. Judge Geiler approached Commissioner Myhrvold from behind and touched him between the legs in a manner commonly referred to as a "Goose." Commissioner Myhrvold considered the conduct to be friendly horseplay. Judge Geiler's conduct did not create a scene.

CONCLUSIONS

Judge Geiler's conduct did not constitute a civil or criminal assault, nor was Commissioner Myhrvold offended by it.

COUNT TWO

You have engaged in a course of conduct in the courthouse involving the subject of sex which brought the judiciary into disrepute, to wit:

A. In the early part of 1970, a group of junior high students came into your court, Division 49 of the Municipal Court of the Los Angeles Judicial District, to observe the judicial process. At that time, a witness was testifying about a "half and half" transaction, meaning half oral copulation and half sexual intercourse. You then went off the record and stated in open court: "For the benefit of the students in the court, the term 'half and half' means 'half fucking and half sucking.'"

FINDINGS

The Examiner failed to establish, in whole or in part, by clear and convincing evidence, any of the facts set forth in Count Two-A.

CONCLUSIONS

Not proved.

B. On or about April 1, 1971, Mrs. Elaine Yvonne Flack, a court reporter, followed you into your chambers at your request. When both of you were inside your chambers, you took off your robe, which revealed that you were without your trousers and only attired in your shorts. You made no explanation or apologies for such behavior.

FINDINGS

On April 1, 1971, Mrs. Elaine Yvonne Flack entered Judge Geiler's chambers to obtain his signature. At that time she saw Judge Geiler in his underweath beneath his unfastened Judicial Robe. She left immediately. Judge Geiler was unaware of her presence

or that he was partially disrobed, nor does he have a conscious memory of the event.

CONCLUSION

The evidence is insufficient to show that Judge Geiler intended to expose himself or to commit any offensive or sexual act.

C. On several occasions in 1970, you requested Deputy Public Defender Warren Soloski to come into your chambers. At such times, you were urinating with the door to the toilet wide open so that you were in full view. You then turned around and exposed your private parts to Mr. Soloski causing him some embarrassment.

FINDINGS

On one occasion, between February and May of 1970, after Deputy Public Defender Warren J. Soloski entered Judge Geiler's Chambers he saw Judge Geiler come out of the toilet holding his penis and walk toward his desk as he zipped himself up. No evidence was offered to show that Mr. Soloski was embarrassed.

CONCLUSIONS

The evidence is insufficient to establish that Judge Geiler intentionally exposed himself.

D. In January of 1970, you stated in open court with reference to the anatomy of a female witness: "She's got a tight ass."

FINDINGS

The Examiner failed to establish, in whole or in part, by clear and convincing evidence, any of the facts set forth in Count Two-D.

CONCLUSION

Not proved.

E. Because of your conduct in the courthouse involving the subject of sex and your courtroom handling of sex cases, both the District Attorney's Office and the Public Defender's Office in Los Angeles County have requested that no cases involving sex be assigned to you.

FINDINGS

Sometime in August 1970, Deputy District Attorney Florence Linn requested on behalf of the District Attorney's office that no cases involving sex be assigned to Judge Geiler because of several complaints received by her for a period of a year from Deputy District Attorneys under her supervision. No evidence was offered to show that the Public Defender's office made a similar request.

CONCLUSION

The facts presented do not establish the specific nature of Judge Geiler's conduct which precipitated the request that sex cases not be assigned to him.

COUNT THREE

You have engaged in a course of conduct of addressing counsel and court attaches in disparaging, vulgar, and unjudicial terms, to wit:

A. In the summer of 1969, you had five males in your chambers. The Court Clerk, Mrs. Michael Provencio, then came into your chambers. As she was leaving, you asked the other five males: "How would you like to eat that?" This question referred to Mrs. Provencio.

FINDINGS

In the summer of 1969, at a time when five to six men were in Judge Geiler's Chambers, Mrs. Michael

Provencio entered the Judge's Chambers at his request. Shortly thereafter she left. As she was leaving, Judge Geiler stated, "How would you like to eat that?" His question referred to Mrs. Michael Provencio. This comment was a crude effort at humor and part of an established course of conduct, to which Mrs. Provencio made no objection until after she was removed from Judge Geiler's Court, nor was sufficient evidence offered to support the conclusion that she was offended thereby.

CONCLUSION

The comment made by Judge Geiler was unjudicial. Judge Geiler did use vulgar and unjudicial language in his conversations with court personnel and Michael Provencio. Some remarks and vulgarity used in the presence of Michael Provencio were undoubtedly provoked by her general demeanor and previous references to her personal sex life. These remarks were made while off the bench and not within the hearing of the public. Judge Geiler regularly used vulgar terms as a part of his vocabulary without intending to offend court personnel nor any awareness that such language may be offensive to them.

B. On several occasions during the early part of 1970, you telephoned Court Clerk, Mrs. Michael Provencio, from your home and gave her the following instructions as to the cases in your court: "Get the mother fuckers ready. I'll be there shortly."

FINDINGS

On occasion during the early part of 1970, Judge Geiler telephoned his Clerk, Mrs. Michael Provencio, and gave her the following instruction with reference to the cases and persons in his courtroom: "Get the

mother fuckers ready. I will be there shortly." This type of language was typical of the vocabulary utilized in their conversations, to which Mrs. Provencio made no objection until after she was removed from Judge Geiler's Court, nor was there sufficient evidence offered to support the conclusion that she was offended thereby.

CONCLUSION

The comment by Judge Geiler was vulgar. The conclusion stated in Paragraph Three-A is equally applicable here and is incorporated herein by reference.

C. In the early part of 1970, you frequently asked Mrs. Provencio, "Did you get any last night?"

FINDINGS

In the early part of 1970, Judge Geiler occasionally asked Mrs. Michael Provencio, "Did you get any last night?" This comment was a crude effort at humor and part of an established course of conduct, to which Mrs. Provencio made no objection until after she was removed from Judge Geiler's Court, nor was there sufficient evidence offered to support the conclusion that she was offended thereby.

CONCLUSION

The comment made by Judge Geiler was unjudicial. The conclusion stated in Paragraph Three-A is equally applicable here and is incorporated herein by reference.

D. In March of 1970, Court Clerk Mrs. Provencio was allegedly late to court from her lunch. At that time you said to her: "You're nothing but a fucking clerk and don't you forget it and you'll do what I tell you and nothing else."

FINDINGS

In March of 1970 on an occasion when Mrs. Michael Provencio returned to court late from her lunch, Judge Geiler told her that she was "nothing but a fucking clerk" and that she was to do exactly as she was told. Mrs. Provencio was offended by the reprimand, but there was insufficient evidence offered to support the conclusion that she was offended by the descriptive adjective.

CONCLUSION

The remarks made by Judge Geiler were disparaging, vulgar and unjudicial. The conclusion stated in Paragraph Three-A is equally applicable here and is incorporated herein by reference. Judge Geiler intended a reprimand without sexual or obscene connotations.

E. In the early part of 1970, you frequently greeted Deputy District Attorney William D. Burns, Jr., in the hallway of the Hall of Justice, with such terms as "Hi, shit head," and "Hi, mother fucker." Sometimes this greeting was voiced quite loudly.

FINDING

No evidence was offered in support of this allegation.

CONCLUSION

Not proved.

F. In February of 1970, Deputy Public Defender Laurence S. Smith was in your court. A marshal escorted a couple of sloppily attired and long-haired prisoners into your court. You then stated: "Oh! Are these Public Defenders?" After Mr. Smith complained about this remark to the presiding judge, the presiding judge then ordered all the remaining preliminary hearings set for that afternoon in your court be assigned to other judges. That afternoon, you badgered and castigated Mr. Smith in public during a preliminary hearing.

FINDINGS

In February of 1970, Judge Geiler stated from the bench "oh, are these the public defenders" at a time when two unkempt and bushy-haired prisoners were brought into the courtroom. Shortly thereafter Deputy Public Defender Laurence S. Smith complained about this remark to Judge Vaino Spencer and as a result one preliminary hearing wherein Mr. Smith was the Attorney of Record was transferred out of Judge Geiler's court. Judge Geiler's remark was an attempted at humor, to which Mr. Smith overreacted. Judge Geiler castigated Mr. Smith publicly later that day concerning this incident.

CONCLUSION

Judge Geiler's remark was not disparaging nor vulgar, because it was said in jest, it cannot be characterized as unjudicial.

G. On November 10, 1970, you came into the office of Mrs. Shirley Mae Estes, who was the Calendar Court Coordinator. Mrs. Estes attempted to explain to you her responsibilities in coordinating the court calendar and the necessity of her monitoring the times of the cases in your court. You became very abusive and shouted obscenities at Mrs. Estes. You concluded by telling her: "And don't you ever forget you're just a fucking clerk."

FINDINGS

On November 10, 1970, Judge Geiler, while in the office of Mrs. Shirley Mae Estes, the calendar court coordinator for the Municipal Court, used the following language in reprimanding Mrs. Estes: "Son-of-a-Bitch," "Bitch," and "Fucking Clerk." Judge Geiler also stated, "No fucking clerk is going to keep time on me" or "Keep track of me," and "Don't you ever forget that you are just a fucking clerk."

CONCLUSION

The language used by Judge Geiler in reprimanding Mrs. Estes was disparaging and vulgar.

H. On March 17, 1971, Mrs. Jeanette Christy was handling a preliminary hearing in your court in the capacity of a private defense attorney. Mrs. Diane Wayne went to your court that morning to meet her friend, Mrs. Christy. During Mrs. Christy's preliminary hearing, you stated that you wanted to see the two women in your chambers after the completion of the preliminary hearing. After the preliminary hearing, the bailiff insisted that the two women go into your chambers. When the two women entered your chambers, you proceeded to give them a few pointers in the handling of sex cases. For the next 45 minutes while other individuals waited in the courtroom, you described some of the sex cases in which you had been involved. The language you used in describing said cases was quite raw and crude.

FINDINGS

Judge Geiler was introduced to Mrs. Christy at a Christmas party at the office of Mr. Richard Fusilier. On that occasion Mr. Fusilier asked Judge Geiler to help Mrs. Christy in criminal matters because of her inexperience.

On March 17, 1971, Mrs. Christy appeared in Judge Geiler's court to conduct a preliminary hearing. Mrs. Wayne sat at the counsel table with her throughout the preliminary hearing. Upon the completion of that matter Judge Geiler invited Mrs. Wayne and Mrs. Christy into chambers to discuss the handling of preliminary hearings. The Judge's conversation, which lasted approximately ten minutes, was rambling and disjointed. For example, Judge Geiler spoke of the importance of the religion of Judges in predicting how they will rule on a matter.

He used "street language" such as, "shit" and "fuck" in discussing cases.

CONCLUSION

Judge Geiler used vulgar and unjudicial language in the presence of Mrs. Christy and Mrs. Wayne.

COUNT FOUR

You have engaged in a course of conduct of addressing members of ethnic minorities in derogatory terms, to wit:

A. The preliminary hearing transcript of *People* v. *Eliazar Pena*, No. A-265886, held on November 25, 1970, discloses that you referred to the defendant as ". . . the funniest Mexican I have seen . . . ."

FINDINGS

During the preliminary hearing in the case of *People* v. *Eliazar Pena*, No. A-265886, the following colloquy occurred:

"The Court: Where were you born?

"The Defendant Pena: Mexico.

"The Court: You look like the funniest Mexican I have seen, and I am part.

"Does he look like me to you?

"The Clerk: No, Your Honor.

"The Court: Besides that, you are an alien, aren't you?

"The Defendant Pena: Yes, sir."

Taken in context this statement was made during an attempt by Judge Geiler to ascertain the ethnic background of the defendant and whether he was an alien in order to fix bail.

CONCLUSION

The remark made by Judge Geiler when taken in context was not derogatory.

B. The preliminary hearing transcript of *People* v. *Leopoldo Cruz, et al.*, No. A-266075, held on November 27, 1970, discloses that you referred three times to the defendants as "wetbacks."

FINDINGS

During the preliminary hearing in the case of *Leopoldo Cruz, et al.* No. A-266075, Judge Geiler used the term "wetback" three times in describing defendants as being illegal aliens from Mexico and in setting forth his analysis as to why the officer was justified in arresting and searching a large group of persons referred to by a witness as "Latins."

CONCLUSION

In context the term "wetback" was not intended by Judge Geiler to be derogatory.

C. In 1970, you referred to Herman Pang, C.S.R., Official Court Reporter of the Municipal Court, Los Angeles Judicial District, as a "chink" in open court.

FINDINGS

No evidence was presented in support of the allegations set forth in Count Four-C.

CONCLUSION

Not Proved.

D. In February of 1970, you called a victim named Monica Sanchez a "fucking . . . fat Mexican Whore."

FINDINGS

The allegations set forth in Count Four-D were not proved by clear and convincing evidence.

CONCLUSION

Not Proved.

COUNT FIVE

You unlawfully ordered the court reporters to delete material from two preliminary hearing transcripts, to wit:

A. In the preliminary hearing of *People* v. *Byron Edward Smith*, No. A-268076, held on January 18, 1971, you noticed that the defendant's mother was present in court and taking notes. You then explosively admonished the defendant's mother relative to her attempting to intimidate the court. This outburst by you caused the defendant's mother to become emotional. At this time, the defendant stood up and stated he did not have to stand for what you were doing. After this, you ordered the defendant to be bound and gagged. Thereupon, Deputy Public Defender Francis X. Maher made several motions: (1) to have the gag removed so that he could communicate with his client; (2) to have statements made by you to the mother as well as the details of the bindings and gagging of the defendant be made part of the record; (3) to transfer this case to another court. All these motions except for the removal of the gag were denied. After the hearings, you directed the court reporter to delete the material with reference to the motion to remove defendant's gag although you had not gone off the record at the time.

FINDINGS

In the preliminary hearing in the matter of *People Byron Edward Smith*, No. A-268076, (Exh. 5) Judge Geiler ordered the court reporter to omit, from the transcript of the proceedings, all references in the reporter's notes to a motion to remove a gag from the defendant "so as not to prejudice the defendant."

CONCLUSION

Judge Geiler's action in the context of the proceedings before him was not unlawful in that it was an attempt to protect the defendant from suffering any prejudice as to

extraneous matters not going to establish probable cause or the identity of the perpetrator of the offense.

B. During the evening of August 7, 1970, you telephoned Mrs. Elaine Yvonne Flack, Court Reporter, and directed her to delete a sentence from the preliminary hearing transcript of *People* v. *Cuhel, et al.*, No. A260973.

FINDINGS

The allegations set forth in Court Five-B were not proved by clear and convicing evidence.

CONCLUSION

Not Proved.

C. During the preliminary hearing in the early part of 1970, you criticized Deputy Defender Mrs. Leslie Abramson for her wearing a granny gown. After the hearing, you directed the court reporter, Miss Betty Sue Pearson, to delete the material with reference to the reprimand of Mrs. Abramson for her attire although you had not gone off the record at the time.

FINDINGS

No evidence was offered in support of the allegations in Count Five-C.

CONCLUSION

Not Proved.

COUNT SIX

In nine preliminary hearings, you have *arbitrarily* and *capriciously relieved* the public defender and appointed private counsel. The defendants in all nine cases were eligible for representation by the Public Defender's Office. In all these cases, the Public Defender's Office was ready, willing, and able to properly represent the defendant. Private counsel in these cases entered a plea of guilty for

the defendant. In none of these nine cases was there an assertion of a conflict of interest. These cases are:

Case No.	*Defendant*	Date of Pub. Hrg.	*Counsel*
1. A-273884	Hakes, Kenneth	P. 6-30-71	Deputy Public Defender Robert M. Myman Private Counsel Ronald A. Litt
2. A-273885	Cole, John T.	6-30-71	Deputy Public Defender Kirkland R. Nyby Private Counsel Ronald A. Litt
3. A-274390	Dominguez, Luis Nelgado	6-30-71	Deputy Public Defender Robert M. Myman Private Counsel Ronald A. Litt
4. A-274440	Marquardt, Milton M.	8- 4-71	Deputy Public Defender David B. Davis Private Counsel Arnold M. Notkoff
5. A-274573	Oderda, Gregory	7- 6-71	Deputy Public Defender Jeanne Ross Private Counsel Carl Davis
6. A-274574	Saldati, Lewis P.	7- 6-71	Deputy Public Defender Jeanne Ross Private Counsel Carl Davis
7. A-275401	Ramirez, Francisco	7-28-71	Deputy Public Defender Stuart A. Chapman Private Counsel Arnold M. Notkoff
8. A-275617	Deever, John H.	8- 4-71	Deputy Public Defender David B. Davis Private Counsel Arnold M. Notkoff
9. A-275798	Ricketts, J. J.	8-10-71	Deputy Public Defender Mark R. Frazin Private Counsel John Weston

FINDINGS

In the nine preliminary hearings specified in count six, the Public Defender was relieved as counsel. The respective defendants were eligible for representation by the Public Defender and the Public Defender's office *was willing to represent each defendant.* In the eight escape cases Judge Geiler made a preliminary statement from the bench regarding his sentencing policy on escape cases where there was no evidence of violence or damage to property.

In each case the defendant advised the court of his desire to plead guilty to a misdemeanor, but the Public Defender refused to plead the defendant for the following reasons:

(1) *Hakes*—The Public Defender wanted to consolidate this matter with other pending Superior Court cases so that defendant might spend less time in jail.

(2) *Cole*—No evidence was offered to show any reason for the public defender's reluctance.

(3) *Dominguez*—Uncertainty as to the effect of a guilty plea on defendant's parole status.

(4) *Marquardt*—Refusal of Judge Geiler to make a record of the plea bargain.

(5) *Oderda*—Uncertainty as to the effect of a guilty plea on defendant's parole status.

(6) *Saldate*—The records of the proceedings before Judge Geiler do not reflect whether the Public Defender made any statement as to whether or not Saldate would plead guilty or the reasons why he should not do so, nor whether an opportunity was afforded to express the Public Defender's position.

(7) *Ramirez*—Disagreement with Judge Geiler over the length of sentence.

(8) *Deever*—Refusal of Judge Geiler to make a record of the plea bargain.

(9) *Ricketts*—Judge Geiler refused to give the Public Defender additional time to research a possible defense suggested by the defendant.

There was no evidence to show that there was a conflict of interest between the Public Defender and the defendants.

In each case private counsel was appointed at the request of the defendant for the purpose of the plea only and without compensation. Thereafter each defendant entered a guilty plea in compliance with *"In Re Tahl."*

After the pleas, the defendants in the escape cases received sentences ranging from 10 to 45 days in County Jail, consecutive. Defendant Dominguez pleaded guilty to misdemeanor possession of marijuana and was placed on probation and fined $100. No evidence was offered to show that any of the defendants were innocent of the charges.

Some members of the Public Defender's Office were quite hostile towards Judge Geiler. Judge Geiler also projected a hostile attitude toward some members of the Public Defender's Office. Since 1970 the Public Defender's office has attempted to limit the tour of duty of the Deputy Public Defenders assigned to Judge Geiler's court to a period of one week. Four of the five Deputy Public Defenders who testified regarding their being relieved as counsel by Judge Geiler had been admitted to practice law for periods of time *ranging from two to four months at that time.*

Deputy Public Defenders were required by office policy to obtain approval from a supervisor before pleading a defendant guilty to a misdemeanor at the time of a preliminary hearing in any municipal court. Additionally some public defenders were reluctant to plead a defendant guilty at this stage of the proceedings.

CONCLUSION

We conclude that Judge Geiler did not violate any statute when he relieved the Deputy Public Defenders in the nine cases, nor is there any analogous precedent or authority to guide a judge faced with the specific problems presented by these nine cases. While it may be argued that Judge Geiler interfered with the attorney-client relationship as between the public defenders and their clients, *his actions were in good faith and with the intent to dispense substantial* justice to both the people and the defendants. All of the cases were the type which probably would have become misdemeanors by sentence had the defendants been held to answer and pleaded guilty or been convicted in the Superior Court.

During the last few years there has been great public concern over the problem of trial court delay and congestion. In addition, prominent and respected lawyers and judges have also criticized the judicial system because of unnecessary delays in disposing of cases. It would appear that Judge Geiler was attempting to respond to this crisis in the court system by encouraging pleas of guilty in minor cases which would undoubtedly result in a misdemeanor disposition in the Superior Court.

Judge Geiler's refusal to permit plea bargains in the *Marquardt* and *Deever* cases to be placed "on the

record'' was petty, unreasonable and contrary to the rule set forth in *People* v. *West*. Judge Geiler's actions in relieving the Deputy Public Defenders occurred partially as a result of the mutually hostile atmosphere. This is certainly a classic example of the failure of two components of the criminal justice system to cooperate to the extent that is possible.

We have no desire to put a stamp of approval on the acts of, or sanction the procedures employed by Judge Geiler; nor do we wish unequivocally to condemn them either. Although his actions were arbitrary in some cases, they should not be characterized as capricious because they were made *in good faith.*

CONCLUSION AND RECOMMENDATION

We find that Judge Geiler's conduct was *prejudicial to the administration of justice and brought the judicial office into disrepute on the following counts:*

One-B, Three-A, Three-D, Three-G and Three-H.

As to the remaining counts we conclude that Judge Geiler was not guilty of wilful misconduct in office or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

Some evidence, particularly that given by Mrs. Diane Wayne (rambling and disjointed conversation); Mrs. Shirley Mae Estes (an explosive reprimand, followed by an abrupt unexplained change in mood), when coupled with the testimony of Mrs. Flack (re disrobing incident) and the touching of Commissioner Myrhvold in a public hallway, may *suggest psychiatric problems* that are beyond our knowledge and expertise. Additionally, this may serve to explain the *patent credibility* conflicts between Judge Geiler and many of the Examiner's witnesses.

We recommend Judge Geiler be censured for the following reasons:

1. *Indiscreet use of vulgar, unjudicial and inappropriate language directed toward court attaches and lawyers.*

2. *His crude and offensive conduct in public places.*

Respectfully submitted,

/s/ D. Sterry Fagan
D. Sterry Fagan

/s/ Arthur L. Alarcon
Arthur L. Alarcon

/s/ Peter S. Smith
Peter S. Smith